

Freeburg Law, LLC
Alex F. Freeburg, Bar No. 7-5182
PO Box 3442
Jackson, WY 83001

Jeremy J Hugus, #7-4630
Cowboy Country Criminal Defense
123 South Beech Street
Casper, WY 82601

Attorneys for Defendant

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

CODY DONOVAN SMITH,

Defendant.

Case No. 1:20-cr-45-NDF

**DEFENDANT’S MOTION IN LIMINE TO EXCLUDE TANGIBLE EVIDENCE,
PHOTOGRAPHS, AND TESTIMONY REGARDING THE SAME**

COMES NOW Defendant, through undersigned counsel, and hereby moves in limine to exclude from trial 1) articles of clothing HB claims to have worn on the night of the alleged incident and 2) all photographs of HBs clothing from the night of the alleged incident and 3) any reference or elicited testimony regarding the blood or fecal stains shown on the garments or photos.

In the course of its investigation, the prosecution obtained articles of clothing it claims it received from HB which she was wearing on the night of the alleged incident. In the course of discovery, the prosecution also provided photographs of these same articles of clothing. (Exhibit A)


These items include HB's bra, underwear, shorts with an underwear-like liner and photos of the same. These items should be excluded as irrelevant under FRE 402 for the following reasons.

First, video-recorded statements from HB provided from the prosecution establish that Smith never removed HB's clothing. The prosecution has also claimed that Smith "attempted to put his hands down H.B.'s shorts, but the furthest he got was touching her buttocks and inner thigh." (Doc. 63, p. 2-3). This is important because the photos of H.B.'s underwear appear to show (and the photos' captions reference) possible blood or fecal stains. However, the prosecutions own claims are that Smith never touched H.B. on the genitals, never engaged in sexual intercourse, and never penetrated her vagina or anus digitally or otherwise. Additionally, the prosecution's own DNA reports fail to support any claim, were it to be made, that Smith penetrated or touched HB on the genitals or otherwise engaged in sexual contact with her that would result in bleeding. (Exhibit B). The DNA lab reports provide no evidence to support a claim that Smith removed these articles of clothing, damaged them, or left deposits of his DNA on them that would explain the blood or fecal stains shown on the clothing or the photographs depicting the clothing.

The garments showing possible blood or fecal stains are irrelevant to the alleged charge of sexual contact and should be excluded under FRE 402. Additionally, even if relevant, the probative value of the garments (or photos of them) showing blood or fecal stains is substantially outweighed by a danger of unfair prejudice or misleading the jury to think that Smith caused theses stains and should also be excluded under Rule 403 as well.

WHEREFORE Defendant requests that the Court enter an Order in limine preventing the prosecution from introducing these

DATED this 26th day of April, 2021

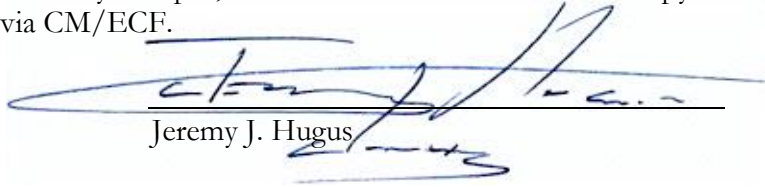


Jeremy J. Hugus, #7-4630
COWBOY COUNTRY CRIMINAL DEFENSE
123 South Beech Street
Casper, Wyoming 82601
P: (307) 333-7884

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2021 I served a true and correct copy of the foregoing on all counsel of record via CM/ECF.

A handwritten signature in blue ink, appearing to read "Jeremy J. Hugus", is written over a horizontal line. The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

Jeremy J. Hugus